

CHAPTER 77 VARIANCES

[Prior to 9/24/86, Labor, Bureau of [530]]

347—77.1(89A) Purpose and scope. This chapter contains rules of practice for administrative proceedings to grant variances and other relief under Iowa Code section 89A.11. These rules shall be construed to secure a prompt and just conclusion of proceedings subject thereto.

347—77.2(89A) Permanent variance and interim order. A permanent variance may be granted by the commissioner when the applicant cannot comply with rules adopted by the commissioner without undue hardship. The commissioner shall consider the age of the facility, the general operating condition of the facility and the effect upon the safe operation of the facility under the variance in determining if a variance shall be granted.

77.2(1) Any owner of a facility covered under Iowa Code chapter 89A desiring a permanent variance from a rule or portion thereof may file a written application with the commissioner.

77.2(2) Contents. An application filed pursuant to 77.2(1) shall include:

- a. The name and address of the applicant;
- b. The address, specific location, and state I.D. number, if any, of the facility involved;
- c. A description of the operation and type of facility;
- d. A listing of the rules to which the variance would apply;
- e. A representation by the owner specifying the undue hardships which would arise from compliance with Iowa Code chapter 89A and its applicable rules and the effect upon the safe operation of the facility under the variance supported by representation from qualified persons having firsthand knowledge of the facts represented; and
- f. A request for a hearing if one is desired.

77.2(3) Interim order. An application may also be made for an interim order to be effective until a decision is rendered on the application for the variance filed previously or concurrently. An application for an interim order may include statements of fact and arguments as to why the order should be granted. The commissioner may rule ex parte upon the application.

347—77.3(89A) Temporary variance. A temporary variance may be granted by an inspector for violations which would be considered to be noncritical to the safe operation of the facility. A temporary variance shall only be issued if the facility passed inspection on all other matters and failure to grant a temporary variance would result in a reinspection of the facility.

77.3(1) Application for variance. Any owner of a facility covered under Iowa Code chapter 89A desiring a temporary variance from a rule or portion thereof may seek a temporary variance. The owner may make a verbal request to the inspector at the time of the inspection or the inspector may grant a variance on his own initiative.

77.3(2) An inspector will consider the following factors prior to granting or denying a request for a temporary variance.

- a. Degree and probability of threatened harm to the users of the facility;
- b. A determination that the issuance of the variance will not substantially affect safe operation of the facility and the minor infractions cannot be corrected before the inspection is completed;
- c. Degree of difficulty in abating the violation; and
- d. General operating condition of the facility.

77.3(3) Upon granting a temporary variance, the inspector shall issue to the owner a written statement of the objects, conditions and violations covered by the temporary variance.

77.3(4) If a variance is denied, the owner may make a written application to the commissioner stating the factors believed to support the variance.

77.3(5) A temporary variance will be valid until the next inspection, although the owner is expected to comply as promptly as possible.

77.3(6) Temporary variances shall only be issued by employees of the division of labor services.

347—77.4(89A) Form of documents and copies. No particular form is prescribed for written applications and other papers filed in proceedings under this chapter. All applications for permanent variances or temporary variances submitted to the commissioner shall be clearly legible. An original and one copy of the application and all supporting documents shall be filed. All documents shall be signed and include the title of the applicant.

347—77.5(89A) Modification and revocation of variance orders.

77.5(1) An affected person may apply in writing for a modification or revocation of any variance. The application shall contain:

- a.* The name and address of the applicant;
- b.* A description of the relief sought;
- c.* A statement setting forth with particularity the grounds for relief; and
- d.* A request for a hearing if one is desired.

77.5(2) The commissioner may move to modify or revoke a variance order. The commissioner shall inform the owner of the action and allow for a hearing.

347—77.6(89A) Action on applications. Applicants shall be notified of the decision of the commissioner by a written order.

These rules are intended to implement Iowa Code chapter 89A.

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